* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 19th November, 2007

Crl.M.C.No.6235-36/2005

\# **NITIN YADAV & ANR.** .....Petitioners

! Through Mr. Rishi Kapoor with Mr. Sunil Bainsala and Ms. Deepti, Advocates

versus

$ **VINISH MITTAL & ORS.** ..... Respondents

^ Through Respondent no. 1 for himelf and for respondents no. 2 and 3

Mr. Pawan Bahl, APP for State.

WITH

Crl.M.C.No.1761-65/2006

\# **KAUSHIK CHATTERJI & ORS.** .....Petitioners

! Through Mr. Rishi Kapoor with Mr. Sunil Bainsala and Ms. Deepti, Advocates

versus

$ **VINISH MITTAL & ORS.** ..... Respondents

^ Through Respondent no. 1 for himelf and for respondents no. 2 and 3

Mr. Pawan Bahl, APP for State.

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the judgment?(No)
2. To be referred to the Reporter or not?(No)
3. Whether the judgment should be reported in the digest?**(No)**

JUDGMENT

P.K.BHASIN, J:

By these petitions under Section 482 of the Code of Criminal Procedure, 1973, the petitioners have prayed for quashing of the complaint case no. 98/05 filed by the respondents under Section 138 of the Negotiable Instruments Act, 1881 as also the order dated 29.10.2005 passed by the Metropolitan Magistrate summoning them as accused. Since both these petitions arise out of the same criminal complaint and were heard also analogously I shall be deciding them by this common order.

2. The relevant facts are that the respondents filed a complaint against the petitioners no. 1 to 4 in Crl.M.C.No. 1761-65/2006 and ICICI Bank Housing Finance Ltd. and also against the two petitioners in Crl.M.C.No. 6235-36/2005 under Section 138 read with Sections 141 & 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') alleging that respondent no. 2 herein and his wife had agreed to sell a flat in Vaishali(Ghaziabad) to respondent no.3 herein and his wife and to enable them to pay the sale consideration to respondent no. 2 they approached the ICICI Bank Home Finance Ltd. for loan. It was alleged in the complaint that loan of Rs. 9,00,000/- was sanctioned by and two demand drafts for Rs. 5,50,000/- and Rs. 2,40,000/- were prepared in the joint name of

respondent no.2 herein and his wife(the sellers of the flat) and the same were to be deposited in A/c No. 68-100-19940 with Allahabad Bank and that account was in the names of respondents no. 1 and 2 herein and this account number was specifically mentioned in the two Demand Drafts also. Third Demand Draft for Rs. 1,10,000/- was prepared in the name of respondent no. 3 (the purchaser of the flat as the borrower). All the three Demand Drafts were issued by ICICI Bank.

When the three demand drafts dated 31st July, 2005 were presented for encashment by the respondents to ICICI Bank all were dishonoured as their payment was stopped by the drawer. After serving statutory demand notices on the petitioners 1 to 4 in Crl.M.C.No. 1761-65/2000 and the two petitioners of Crl.M.C.No. 6235-36/2006 as well as upon ICICI Bank Housing Finance Ltd. the respondents herein filed a criminal complaint in Court in respect of the three dishonoured Demand Drafts. In that complaint accused no. 1 was the ICICI Bank Housing Finance Ltd. and other accused were the petitioners 1 to 4 of Crl.M.C.No. 1761-65/2006 and petitioners 1 and 2 of Crl.M.C.No. 6235-36/2006. The learned Magistrate took cognizance for the offence under Section 138 of the Act in respect of the two demand drafts for Rs. 5,50,000/- and Rs. 2,40,000/- only since the third demand draft had not been placed on record by the complainants and then summoned all the seven accused. The petitioners of these two petitions, out of whom one petitioner is ICICI Bank Ltd., which was not an accused in the complaint nor was it summoned felt aggrieved by the summoning order and so they filed

these two petitions for quashing of the complaint and the summoning order.

3. The only point urged on behalf of the petitioners in these two petitions by their counsel was that the complaint qua petitioners 1 to 4 in Crl.M.C.No.1761-65 of 2006 and the two petitioners in the other petition was not maintainable since in the complaint nothing had been pleaded as to how these petitioners, who had been arraigned in the complaint as accused only because of being the employees of ICICI Bank Housing Finance Ltd., were responsible and liable for the dishonour of the two Demand Drafts in question which were allegedly got prepared as a loan to respondent no. 3 herein by ICICI Bank Housing Finance Ltd. to enable them to purchase some flat in Vaishali. Learned counsel had also submitted that the only averment in the complaint against these petitioners was that they were employees of accused no. 1(ICICI Bank Housing Finance Ltd.) and they were holding office as Manager/Senior Executive and were responsible collectively for giving the 'stop payment' instructions in respect of the Demand Drafts in question but these averments were not sufficient to make them vicariously liable in respect of the offence allegedly committed by the Company of which they were alleged to be the employees, namely, ICICI Bank Housing Finance Ltd.

4. On the other hand, respondent no. 1, who argued the matter in person being a practicing advocate and as a counsel for other two respondents, (although as per the case of the petitioners he is a builder as well as a broker), submitted that the averments against the employees of ICICI Bank Housing Finance Ltd. made in the

complaint were more than sufficient to summon them as accused. In support, he cited one judgment of Hon'ble Supreme Court in "**S.M.S. Pharmaceuticals Vs. Neeta Bhalla & Anr." JT 2005 (8) 450**.

5. I have gone through the said judgment of Hon'ble Supreme Court in S.M.S. Pharmaceuticals' case (supra) relied upon on behalf of the respondents and find that in that case itself it was clearly held that a clear case should be spelled out in the complaint against the persons sought to be prosecuted by invoking Section 141 of the Act. In that case one Director of the accused Company was sought to be prosecuted with the aid of Section 141 of the Act and when that Director challenged his prosecution it was observed by the Hon'ble Supreme Court that a Director cannot be prosecuted merely on the allegation of his being a Director. It has to be averred in the complaint that at the time the offence was committed the person impleaded as an accused was in charge of and responsible for the conduct of business of the company. In the present case, none of the petitioners in the two petitions was even a Director of ICICI Bank Housing Finance Ltd. and, therefore, the complaint against them on the mere allegation that they were the employees of the said Company could not be entertained. It appears that it was the grievance of the complainants that petitioner no. 3 Ms. Abhishikha Chaddha and petitioner no. 4 Ms. Sangmitra in Crl.M.C. no. 1761-65/2006 and petitioner no. 1 Nitin Yadav in the other petition had demanded 'refreshment/bribe amount' of Rs. 50,000/- from the complainants for releasing the payment of the three demand drafts. However,

learned Metropolitan Magistrate took cognizance only for the offence under section 138 of the act and not of these allegations of demand of bribe by the said three employees of ICICI Bank Housing Finance Ltd. Therefore, in my view, the employees of ICICI Bank Housing Finance Ltd. who had been impleaded as accused in the complaint could not be summoned for the offence under Section 138 of the Act with the aid of Section 141 of the Act without there being an averment in the complaint that at the time of the commission of the offence they were in charge and responsible to the Company for the conduct of the business of the Company.

6. In the result, both these petitions are allowed to the extent that the criminal complaint No. 98 of 2005 against petitioners no. 1 to 4 in Crl.M.C. No. 1761-65/2006 and against petitioners 1 & 2 in Crl.M.C. No. 6235-35/2005 and the order dated 29.10.2005 passed by the learned Metropolitan Magistrate summoning them as accused would stand quashed. The complaint would, however, proceed against ICICI Bank Housing Finance Ltd., which was impleaded as accused no.1 in the complaint since it has chosen not to challenge the order dated 29.10.2005 whereby it was also summoned as an accused through its Chairman cum Managing Director.

November 19, 2007 **P.K.BHASIN,J**